

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

BELTON NEA/EDUCATION SUPPORT)	
PERSONNEL,)	
)	
Petitioner,)	
)	
v.)	Public Case No. R 94-002
)	
BELTON 124 SCHOOL DISTRICT,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

Belton NEA/Education Support Personnel filed a unit clarification petition with the State Board of Mediation requesting that the Board clarify an existing certified bargaining unit of educational support employees employed by the Belton 124 School District by including the District's clerical employees in said bargaining unit. The petition was later amended from a unit clarification petition to a representation petition. The Association seeks to represent 15 of the District's clerical employees who were previously excluded from the existing educational support bargaining unit. The District seeks to exclude one secretary from the existing educational support unit who was previously included. A hearing on the matter was held on November 30, 1993 in Belton, Missouri, at which representatives of the Association and the District were present. The case was heard by State Board of Mediation Chairman Francis Brady and employee member Joel Rosenblit. The record was later submitted to employer member Pamela Wright. At the hearing the parties were given full opportunity to present evidence and testimony. Afterwards, briefs were filed. Having considered the record evidence and arguments of the parties, the Board sets forth the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

In 1981, the Association petitioned the State Board of Mediation for certification as the public employee representative of certain educational support employees of the Belton School District. Among the employees which the Association sought to represent were twelve building and central office secretaries. The District opposed their inclusion in the proposed bargaining unit on the grounds they were confidential and/or supervisory. Four of the secretaries at issue worked in the District's central office, while the other eight secretaries at issue worked in various school buildings. A hearing on the matter was held and the Board subsequently issued its decision.¹ That decision held that an appropriate bargaining unit included all clerical employees, aides, and school nurses; and that all twelve of the secretaries at issue were confidential employees who were excluded from the aforementioned bargaining unit. As a practical matter, this latter finding excluded the vast majority of the District's secretaries from the bargaining unit.

The Board's decision was appealed to Circuit Court,² the Court of Appeals³ and the (Missouri) Supreme Court⁴. Each court affirmed the Board's decision.

While these appeals were ongoing, a representation election was conducted pursuant to the Board's order. The Association won the election and was certified by the Board the exclusive representative of the employees in the aforementioned bargaining unit. Since then, the Association has represented those employees. In

¹ Belton School District, Public Case No. 81-015 (SBM 1982).

² Dec. CV182-256 CC (1983).

³ WD 34,837 and WD 34,881 (1984).

⁴ 695 S.W.2d 894 (Mo. banc 1985).

1993, the Association filed a unit clarification petition which sought to include the secretaries in the bargaining unit who were excluded in 1982. The form of the petition was later amended from a unit clarification petition to a representation petition. A total of 16 secretarial positions are involved herein. Four of the secretaries at issue work in the District's central office. The remainder work at the various school buildings: four at the high school, three at the middle school, and four at the elementary schools (one at each of the four elementary schools). The District also seeks to exclude one building secretary who was previously included in the bargaining unit, namely the secretary at Belton-Ozanam Southland Cooperative.

The Belton School District consists of one senior high school, one junior high school, four elementary schools, one special school (Belton-Ozanam) and the District's central administrative office. Secretaries work at each location.

Seven secretaries worked at the central office as of the date of the hearing: Jean Boston, Bane Henry, Carol Olinger, Nancy Duvall, Rita Fields, Carol Lampson and Mary Sudduth. Boston is the central office business manager who monitors the District's budget. She also serves as secretary to the Board of Education. In this capacity, she attends Board meetings including executive sessions where she takes the minutes. She will soon retire. After she does so, Henry will assume Boston's position and Henry's former position will not be refilled. Thus, after Boston retires there will be just six secretaries at the central office. Olinger is the secretary to the superintendent of schools, Gordon Sunderland. The Association does not seek to have Boston, Henry or Olinger included in the bargaining unit. Duvall is the central office payroll secretary. She also acts as treasurer for the School Board and accounts for District finances. When Boston has been unable to attend School Board meetings, Duvall has been her substitute. The other three secretaries (Fields, Lampson and Sudduth) also perform

general secretarial and record keeping functions, but are never called upon to attend Board meetings. Fields is the special education/attendance secretary. As the special education secretary, she keeps records on the individualized education plans (IEPs) for the District's special education students. In this capacity she also serves as secretary to the director of special education, Ken Southwick, and types all his correspondence. As the attendance secretary, she keeps track of the student attendance that is reported to the state. Lampson is the secretary for Gary Krueger, the assistant superintendent for personnel. In this capacity she types his correspondence and memoranda. She also acts as the building's receptionist, answers incoming phone calls to the central office and manages the use of the facility. Sudduth is the accounts payable clerk. She pays the District's bills after payment is approved by the Superintendent's office.

Boston, Henry, Duvall and Sudduth are located in one room, Olinger and Lampson in another and Fields in yet another.

The twelve remaining secretaries at issue are building secretaries who work at either the high school, the middle school, an elementary school or the District's special school. Each works closely with the building principal and, where present, assistant principal to help keep the building running smoothly.

There are four secretaries at the high school: Carol Oldham, Diana Forester, Carole Dodge and Debbie Rearick. All perform general secretarial and record keeping functions such as answering the telephone and typing correspondence and documents. As such, they have access to the employee records which are kept at the high school office. The records they are privy to include employee evaluations, grievance responses and written reprimands. The secretarial work is distributed among the four who sit in an open common area. All four are supervised by the high school principal. None of these secretaries can transfer, promote, layoff, recall or discipline any other employee.

Oldham is the lead secretary at the high school. She ensures that the office runs smoothly. She assigns the other three secretaries work, answers their questions and provides direction when necessary. She coordinates events that are put on the school calendar such as club meetings. In addition, she is responsible for calling substitute teachers to fill in for regular teachers who are absent. This process involves calling someone on the substitute teacher list prepared by the central office. She chooses someone from the list and calls them. If that person is unavailable or not interested, she keeps calling until she finds someone. In deciding which substitute to call from the list, she considers the needs of the classroom in issue; the classroom teacher's wishes; the substitute's preferences, background and certification; and the substitute's prior performance in the school. The other secretaries at the high school have never been notified by the District that Oldham, as lead secretary, is their supervisor. Oldham has been present when the other secretaries were formally evaluated, but the principal performed these evaluations; not her.

There are three secretaries at the middle school: Julie Lasher, Beverly Dickey and Martha Hemmerling. Like their counterparts at the high school, all perform general secretarial and record keeping functions. Each has access to the employee records which are kept at the junior high school office. The records found in this office are the same as those found at the high school office. All are supervised by the building principal. None of these secretaries can transfer, promote, layoff, recall or discipline any other employee.

The lead secretary at the junior high school (Lasher) performs the same duties as her counterpart at the high school, to wit: she assigns work to the other secretaries, answers questions and provides direction when necessary to student volunteers and the other secretaries. She also is responsible for calling substitute teachers off the

approved substitute teacher list. The other secretaries at the junior high school have never been notified by the District that Lasher, as lead secretary, is their supervisor.

There is a secretary at each of the District's four elementary schools: Mary Beggs at Gladden, Sue Hicklin at Cambridge, Sandy Spiller at Hillcrest and Linda Teague at Scott. Peggy Conner is the secretary at Belton-Ozanam Southland Cooperative, the District's special school, and is similarly situated to the elementary school secretaries. Each performs general secretarial and record keeping functions, checks attendance and calls substitute teachers when needed off the substitute teacher list. All have access to the employee records which are kept at their school office. The records found in their office are the same as those found at the high school office. They are all supervised by their building principal. None of these secretaries can transfer, promote, layoff, recall or discipline other employees.

The District's labor relations and personnel policies are formulated by the School Board and applied to employees by the District's administrative staff. The various working conditions, benefits and wages for District employees are established by the School Board.

Staff is hired by the Board upon the Superintendent's recommendation. Employees are hired through the District's personnel office.

Anyone seeking employment in the District as a substitute teacher fills out an application at the central office. The applicants are not interviewed but their certification status is checked. Each school year, Nancy Duvall compiles a list of persons qualified and interested in substituting in the District. This substitute list with a hundred plus names on it is approved by the School Board. Persons on this substitute list are not paid by the District until they are called and actually work as substitute teachers. The approved list is then supplied to the various building principals. The building principal, in

turn, designates someone to make the phone call to notify a substitute to come when needed. The principal can designate any employee to call a substitute teacher when a teacher is absent. On at least one occasion an aide called a substitute. Normally though principals designate their secretary as the person who calls substitutes. The secretary has the discretion to decide who to choose off the substitute list. They do not have to call people in any particular order; instead they can select whoever they want off the substitute list. The substitutes chosen are usually those who the secretaries feel comfortable with. Secretaries are not empowered to remove anyone from the substitute list. However as a practical matter, if a secretary does want to use a person as a substitute, they simply do not call that person.

Building secretaries do not monitor substitute teachers in the classroom. They do receive information though from other teachers about the substitute's performance which they consider when deciding whether to call that person again.

All District employees are evaluated by their supervisor, who is a District administrator. The supervisor for all employees in a school building, including substitute teachers and building secretaries, is the building principal. The supervisor for the secretaries at the central office is either the Superintendent or one of his assistants. Employees are evaluated by their supervisor in accordance with criteria set forth in Board policy and on standard forms which may not be varied by the supervisor. Building secretaries do not evaluate substitute teachers. After formal evaluations are completed by the supervisor, they are usually typed by the secretaries. The evaluation is then placed in the employee's personnel file which is maintained in the Superintendent's office. The personnel files of substitute teachers are also maintained in the Superintendent's office. Building principals also keep employee files in their offices, but

these are not considered the official file. The official file of all employees, including substitute teachers, are those maintained in the Superintendent's office.

The Superintendent can suspend employees, but only the Board can discharge. No other District supervisors, including principals and administrators, can suspend or discharge. If a principal issues a written reprimand, it would be typed by their secretary.

Grievances are rarely filed in the District. When they are though, administrators are directed to follow the District's uniform grievance procedure. The first level of that procedure is where the employee and his or her immediate supervisor attempt to resolve the problem. If the grievance is not resolved, it can be appealed to the Superintendent and ultimately the School Board. The building principals are the individuals responsible for handling the first step of the grievance procedure in the schools. The secretaries type the principal's response to a grievance. The secretaries do not investigate the grievance or assist the principal in responding to same. The teachers' bargaining representative, MNEA, and the support staff bargaining representative, Belton NEA/ESP (hereinafter Association) deal with the Superintendent to resolve grievances.

Both the MNEA and the Association meet and confer with the District regarding the wages, hours, and working conditions of the employees in their respective bargaining units. The District's bargaining proposals are usually typed by Olinger, but Lampson is sometimes involved in typing same. Boston types salary proposals for the District. In past years, the District has been represented at the bargaining table by Superintendent Sunderland, Assistant Superintendent Krueger, Director of Special Education Southwick, a secondary principal and an elementary principal. Southwick has not participated at the bargaining table for several years. This last year, Superintendent Sunderland met alone with the MNEA in meet and confer sessions for the teachers'

bargaining unit, while Assistant Superintendent Krueger met alone with the Association for sessions involving the support staff bargaining unit. Krueger generally makes negotiation recommendations to the Superintendent, who in turn makes recommendations concerning same to the School Board.

All decisions regarding wages, working conditions and agreements with either the MNEA or the Association are made by the School Board acting in executive session. During the past year, Superintendent Sunderland and Assistant Superintendent Krueger were present in executive session when those decisions were made by the School Board. In past years, Ken Southwick, the director of special education, was also present in executive session. Also present in executive sessions when labor negotiations were discussed were Carol Olinger, Jean Boston in her capacity as Board Secretary and Nancy Duvall as Boston's substitute on those occasions when Boston was unavailable. None of the other central office secretaries have been present at executive sessions.

CONCLUSIONS OF LAW

The parties have essentially framed the issues to be decided as follows: 1) is the Board's 1982 decision dispositive of the outcome herein; 2) if not, are the secretaries in question confidential employees; and 3) if not, are the building secretaries supervisory or managerial employees. These contentions are addressed below.

DISCUSSION CONCERNING EFFECT OF BOARD'S 1982 DECISION

This is not the first time this Board has faced the question of whether the central office and building secretaries at the Belton School District are confidential and/or supervisory employees. As noted above, the Board addressed this very same question in 1982 and found that all twelve secretaries at issue therein were confidential employees. Having so found, the Board did not address the possible supervisory status

of the secretaries. This decision was then appealed to Circuit Court, the Court of Appeals and the (Missouri) Supreme Court, where it was affirmed at each step.

The District argues that given the foregoing, the Board is precluded from reexamining the issue anew of whether the central office and building secretaries are confidential and/or supervisory employees. It contends the matter is res judicata.

The judicially developed doctrine of res judicata precludes relitigation of previously determined claims. The basic proposition for the doctrine is that a party should not be allowed to relitigate a matter which has been resolved. It rests on a consideration of economy of time and the public policy favoring the establishment of certainty. A final decision on the merits puts an end to the dispute so that none of the includable issues can be raised again in subsequent proceedings.

Here, there is no question that there was a final decision on the merits previously. It is also clear that the parties herein are the same as before and the claim herein is the same as before. That being so, the threshold question is whether we should address the matter anew as urged by the Association.

We find we are not foreclosed from addressing the secretaries status again because of the 1982 decision. In our view, there is a compelling reason for doing so, namely that the legal standard applied by this Board to determine confidential status has changed since the 1982 decision.

The following historical context shows this. In the 1982 Belton decision, this Board applied the "confidentiality test". Under that legal standard, all employees having a confidential relationship to management were excluded from the bargaining unit without regard to labor-nexus. In so finding, the Board rejected the legal standard it had previously used, the labor-nexus test, and announced it was moving to the "confidentiality test". As previously noted, this change in Board policy was upheld by the

Missouri Supreme Court.⁵ In that decision, the Court recognized that the Board has broad discretion in implementing statutory policy and was free to modify or discard announced guidelines because there is no application of stare decisis to administrative tribunals. In 1989, in Parkway School District⁶, the Board departed from the confidentiality test and announced a return to the labor-nexus test for determining confidential status. This decision was appealed and ultimately upheld by the Missouri Supreme Court.⁷ In that decision, the Court found that the Board's departure from the "confidentiality test" and return to the labor-nexus test was within the Board's statutory mandate. The Court refused to probe into the reasons for reversion to prior policy, holding that such policy determinations were entitled to great deference.

Set against this historical backdrop, the Board was invited in Grandview School District⁸ to abandon the labor-nexus test and return to the confidentiality test. We expressly declined to do so stating:

"...This Board has no interest whatsoever in returning to the confidentiality test we used in Belton. Moreover, were we to do so, this would probably precipitate a third trip to the Supreme Court on this issue. Therefore, we take this opportunity to announce our intention to continue to apply the labor-nexus test to determine confidential status."

This statement gave notice of our intent to apply the labor-nexus test uniformly. Were we to find that the Belton School District was excluded from that test because of our 1982 decision, we would in effect be giving them an exception not granted to any other

⁵ Supra, Footnote 4.

⁶ Public Case No. 88-025 (SBM, 1989).

⁷ 807 S.W.2d 63 (Mo. 1991).

⁸ Public Case No. R 91-010 (SBM, 1991).

public employer in Missouri. We decline to give them such an exception. Accordingly then, we find that the Board's 1982 decision is not dispositive of the outcome herein because the legal standard applied by the Board to determine confidential status has changed since then. Furthermore, we believe the following points are noteworthy. This Board's statutory duty is to determine the appropriateness of proposed bargaining units. Our Supreme Court noted in Parkway that in effectuating that duty, the presumption is "in favor of inclusion" in a bargaining unit. (Parkway, supra, footnote 7, at p. 14). Given that presumption, we are hard pressed to deny employees their rights under the Missouri Public Sector Labor Law (specifically denying them inclusion in a bargaining unit) on the grounds that our prior decision automatically controls and precludes their inclusion. While that may ultimately be our finding herein, we believe we are obligated to review the facts anew each time a labor organization petitions for an election. The reason for this is obvious: facts can change over time. Here, for example, there has been considerable turnover among the Belton clerical staff since our 1982 decision. Just six of the clerical employees involved here worked for the District in 1982; the rest were hired subsequent to our 1982 decision. Additionally, the District now has job descriptions for the positions in question. These job descriptions did not exist at the time of our prior decision. Given the foregoing points, we will rely on the facts in this record, not the facts contained in the 1982 record, and decide whether the secretaries in question should be excluded from any bargaining unit due to the nature of their duties.

DISCUSSION CONCERNING CONFIDENTIAL STATUS

Although confidential employees are not specifically excluded from the coverage of the Missouri Public Sector Labor Law, case law from this Board and the courts have carved out such an exclusion.⁹ The confidential exclusion protects a municipal

⁹ See footnotes 1 through 4.

employer's right to conduct its labor relations through employees whose interests are aligned with those of management, rather than risk having confidential information handled by people with conflicting loyalties who may be subjected to pressure from fellow bargaining unit members. This exclusion means that confidential employees cannot be included in any bargaining unit. Here, the District contends the 16 central office and building secretaries in the District are confidential employees, so it is necessary for us to determine if such is the case.

In making this call, the Board will apply the labor-nexus test. Under that legal standard, employees who act in a confidential capacity to persons who formulate, determine and effectuate management policies in the field of labor relations are considered confidential employees. Employees are excluded from a bargaining unit under this test if they have access to advance information about management's strategy and tactics in labor matters which might be used to the detriment of management.

Under the labor-nexus test, it is necessary at the outset to determine who "formulates, determines and effectuates policies in the field of labor relations." Based on the record herein, we find that other than the School Board, the people who "formulate, determine and effectuate" labor relations policies in the Belton School District are administrators Sunderland and Krueger. Both regularly attend school board meetings including executive sessions where the Board formulates labor policies and strategies. Additionally, each has reported directly to the Board regarding labor matters and made recommendations concerning same. In the most recent meet and confer process with the District's two bargaining units, Sunderland handled the teacher unit by himself while Krueger did the same with the support staff unit.

Several years ago, other administrators assisted Sunderland and Krueger in the meet and confer process, namely Southwick (the Director of Special Education), an

unidentified secondary principal and an unidentified elementary principal. None has participated in the meet and confer process for several years. The reason for this is that a decision was made several years ago to reduce the number of administrators involved in the (meet and confer) process. Insofar as the record shows, Southwick does not presently participate in any meaningful way in the formulation, determination and effectuation of District labor relations policies. He is involved in supervising and coordinating the District's special education policies--not labor relations policies. While the school principals supervise and evaluate the employees in their schools, they do not formulate the District's bargaining strategy.

Having found that only the Board, Sunderland and Krueger are responsible for formulating, determining and effectuating the District's labor relations policies, attention is turned to their secretaries to determine if they meet the labor-nexus test. Board secretary Boston is not in issue, nor is Henry (Boston's replacement after she retires), because both were excluded by the parties agreement. Additionally, Sunderland's secretary, Olinger, is not in issue because she too was excluded by the parties agreement. Krueger's secretary (Lampson) is in issue, as are the remaining three central office secretaries: Duvall, Fields, and Sudduth.

Krueger's secretary, Lampson, acts in a capacity similar to Sunderland's secretary, Olinger. Lampson types all Krueger's correspondence and memoranda, including those made to the Board concerning labor relations matters. Additionally, she sometimes types District bargaining proposals. Krueger has significant labor relations responsibilities for the District. Specifically, he is one of two District administrators who formulates and effectuates the District's labor relations policies and also one of two administrators who meets and confers with District employees. Given the level of Krueger's labor relations responsibilities, it follows that his secretary (Lampson) acts in a

confidential capacity to him. We find she is a confidential employee under the labor-nexus test and is excluded from any bargaining unit on that basis.

Duvall, the central office payroll secretary accounts for District finances. While this job gives her access to information concerning the District's financial condition, this information is not covered under the labor-nexus test (i.e. labor relations matters). Having said that, Duvall has another job responsibility pertinent here, namely that she acts as the School Board's treasurer. In this capacity she attends Board meetings when Board secretary Boston cannot. Duvall has been present in Board meeting executive sessions when labor negotiations were discussed. She has therefore been privy to information about management's strategy and tactics in labor matters which is not available to the Association. Given the foregoing, we find she is a confidential employee under the labor-nexus test and is excluded from any bargaining unit on that basis.

Southwick's secretary, Fields, acts in a capacity similar to Sunderland's secretary (Olinger) and Krueger's secretary (Lampson). Specifically, Fields types all Southwick's correspondence and memoranda. We have previously found though that Southwick is not one of the District's administrators primarily responsible for effectuating the District's labor relations policies. While he formerly participated in the meet and confer process with the District employees, he has not done so for the last several years. Given Southwick's lack of involvement in that process, it logically follows that the information Fields is privy to does not concern management's strategy in bargaining. We therefore find Fields is not a confidential employee under the labor-nexus test. Accordingly then, she is eligible for inclusion in the bargaining unit found appropriate.

Sudduth is the accounts payable clerk. This job involved paying the District's bills after payment of same is approved by others. While Sudduth works in the same room as other secretaries who are confidential (i.e. Boston, Henry and Duvall), there are

no specific examples in the record of her being privy to information about management's strategy in bargaining. As examples, she has not attended Board meeting executive sessions when labor negotiations were discussed, nor has she typed any material concerning labor relations matters. We therefore find Sudduth is not a confidential employee under the labor-nexus test. Accordingly then, she is eligible for inclusion in the bargaining unit found appropriate.

In finding two of the central office secretaries to be non-confidential, we are well aware that this outcome conflicts with that part of the Board's 1982 decision wherein it was held that the four secretaries assigned to the central office:

"would be considered confidential employees even under the more narrow labor-nexus test in that those secretaries work in a confidential capacity to the school superintendents and members of the board of education (obviously persons who formulate, determine and effectuate policies in the field of labor relations)." ¹⁰

We no longer adhere to the above-stated view because the evidence in this case compels a different finding. To begin with, the amount of secretarial work performed in the central office has obviously increased since the 1982 decision because there were just four central office secretaries in 1982 while there were seven as of the time of the hearing herein. Additionally, Fields and Sudduth did not work in the central office in 1982. Inasmuch as the 1982 decision did not address Fields or Sudduth or the job duties they currently perform, the 1982 decision can be distinguished on that basis alone.

Having so found, attention is now turned to the building secretaries and their alleged confidential status. It has already been found that the building principals are not primarily responsible for formulating, determining and effectuating the District's labor relations policies. That responsibility rests with the Board, Sunderland and Krueger. In

¹⁰ Supra, footnote 1, at page 4.

past years though, a secondary principal and an elementary principal served on the District's bargaining team. There is nothing in the record that would indicate that when the principals served on the District's bargaining team, their secretaries assisted them in formulating the District's bargaining strategy. Likewise, there is no evidence that the building secretaries ever read or typed documents concerning the District's bargaining strategy.

The building secretaries perform routine secretarial tasks, one of which is typing correspondence and other material for the principal. Included in this latter category of documents are evaluations, employee reprimands and the principal's written response to grievances.

We have previously held that typing employee evaluations and disciplinary notices is not sufficient to make an employee confidential under the labor-nexus test.¹¹ That finding controls here as well. We further find that the additional task of typing the principal's written response to grievances does not make an employee confidential either. Since typing the foregoing matters does not make an employee confidential, it logically follows that having access to personnel files wherein this information is kept, as the building secretaries do, is also not sufficient to make someone confidential. We therefore find that none of the building secretaries are confidential under the labor-nexus test.

DISCUSSION CONCERNING SUPERVISORY OR MANAGERIAL STATUS

The final issue to be resolved is whether the building secretaries are supervisory or managerial employees. The District contends they are while the Association disputes this assertion.

¹¹ Supra, footnote 8.

Attention is focused first on the secretaries alleged supervisory status. Although supervisors are not specifically excluded from the coverage of the Missouri Public Sector Labor Law, case law from this Board and the courts have carved out such an exclusion.¹² This exclusion means that supervisors cannot be included in the same bargaining unit as the employees they supervise.

In making this call, the Board has historically considered the following factors:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees;
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters;
- (3) The number of employees supervised, and the number of actual persons exercising greater, similar or lesser authority over the same employees;
- (4) The level of pay including an evaluation of whether the supervisor is paid for a skill or for supervision of employees;
- (5) Whether the supervisor is primarily supervising an activity or primarily supervising employees; and
- (6) Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.¹³

We will apply them here as well. Not all of these criteria need to be present for a position to be found supervisory. Rather, in each case the inquiry is whether these

¹² See Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d (Mo. App. 1977) and St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, Missouri, Case No. 76-013 (SBM 1976).

¹³ See, for example, City of Sikeston, Case No. R 87-012 (SBM 1987).

criteria are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.¹⁴

Applying these criteria to the ten building secretaries and two lead secretaries, we conclude that none of them meet this supervisory test. Our analysis follows.

Attention is focused first on the two lead secretaries. The secretaries at the high school and the junior high school have never been told that the lead secretary is their supervisor. As their title indicates, the lead secretaries are leadworkers. They work side by side with the other secretaries and do the same secretarial work as them. In addition though, they assign the other secretaries work, answer their questions, relay instructions from the principal, and provide direction when necessary. In our view, these tasks involve limited independent judgment and certainly are insufficient to make them supervisors. While the District contends the lead secretaries evaluate the other building secretaries' performance, it is actually the principal who evaluates the building secretaries; the lead secretary simply sits in on the meeting.

The focus now turns to the ten building secretaries. No other employees, including the substitute teachers, report to the building secretaries. That being the case, the building secretaries do not supervise anyone in the traditional labor relations sense. Additionally, they have no role whatsoever in most of the factors listed in criteria (1) above. Specifically, they have not promoted, transferred, disciplined or discharged anyone; all those responsibilities are handled by their principal, Krueger or Sunderland.

The crux of the District's contention that the building secretaries are supervisors is that they call substitutes when they are needed to fill in for an absent teacher. The building secretaries call someone on the approved substitute teacher list and notify them

¹⁴ See, for example, Monroe County Nursing Home District, d/b/a Monroe Manor, Case No. R 91-016 (SBM 1991).

to come in for the day. They have no role in compiling the list and may not add names to the list. It is undisputed that the building secretaries call whoever they want off the substitute list. In deciding who to call, the building secretary usually considers the needs of the classroom, the absent teacher's wishes, and the substitute's background, certification and prior performance in the school.

While the District contends that the calling of substitutes qualifies as "hiring" under factor (1) above, we are not so persuaded. Our reading of the term "hiring" is not as expansive as that proposed by the District. In our view, the term "hiring" envisions employing someone on a full-time or part-time basis--not as a substitute.

Assuming for the sake of discussion though that calling substitutes qualifies as "hiring" under factor (1) above, "hiring" is simply one of the criteria utilized to determine supervisory status. Here, insofar as the record shows, it is the only criteria in factor (1) that the building secretaries arguably meet. Under these circumstances, the calling of substitutes by the building secretaries does not elevate their position to supervisory status. That being so, we find that the building secretaries do not qualify as supervisors under the criteria noted above.

Finally, we will assess the building secretaries claimed managerial status. Managerial employees, like supervisory employees, are not specifically excluded from the coverage of the Missouri Public Sector Labor Law. Nevertheless, case law from this Board and the courts have carved out such an exclusion.¹⁵

In deciding whether the position in question is managerial, this Board has historically considered the degree to which the individual participates in the formulation, determination and effectuation of management policy. We will do so here as well.

¹⁵ See Department of Social Services, Case No. 83-012 (SBM 1984) and City of St. Louis, Lambert Airport, Case No. AC 94-001 (SBM, 1994).

There is absolutely nothing in the record that indicates that the building secretaries participate in the formulation, determination and effectuation of management policy. All those decisions are made by others. Furthermore, the fact that the building secretaries call substitutes does not constitute a managerial task. That being so, we find that the building secretaries are not managerial employees either.

DECISION

It is the decision of the State Board of Mediation that Jean Boston, Bane Henry, Carol Olinger, Nancy Duvall and Carol Lampson are confidential employees. They are therefore ineligible for inclusion in any bargaining unit. The remaining central office, building secretaries and lead secretaries are neither confidential, supervisory or managerial employees. This includes Peggy Conner, the secretary at the Belton-Ozanam Southland Cooperative. These 14 employees are therefore eligible for inclusion in a bargaining unit. The parties stipulated at the hearing that a separate bargaining unit would not be created for these employees. Rather, should they vote for representation, they will be accreted to the existing support staff bargaining unit. The 14 eligible employees will therefore vote whether or not they desire to be represented by the Association. If a majority of valid ballots are not cast for representation, the employees will remain unrepresented. If a majority of valid ballots are cast for representation, the employees will be included in the existing support staff bargaining unit currently represented by the Association.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the 14 employees identified in the preceding paragraph. This election shall be conducted as early as possible, but not later than thirty (30) days from the date below. The exact time and place will be set

forth in the notice of election to be issued subsequently subject to the Board's rules and regulations. The employees eligible to vote are identified in the decision. Those eligible to vote shall vote whether or not they desire to be exclusively represented by Belton NEA/Education Support Personnel.

The Employer shall submit to the Chairman of the State Board of Mediation, as well as to the Association, within fourteen days from the date of receipt of this decision, a list of addresses of the 14 employees eligible to vote in the election.

Signed this 4th day of May, 1994.

(SEAL)

STATE BOARD OF MEDIATION

/r/ Francis R. Brady

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